



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**MAY 15 2018**

R. Reid LeBeau II  
180 East Fifth Street, Suite 940  
Saint Paul, MN 55101

RE: MUR 7317

Dear Mr. LeBeau:

On February 2, 2018, the Federal Election Commission ("Commission") notified your clients of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). On May 10, 2018, based upon the information contained in the complaint and information provided by respondents, the Commission decided to dismiss allegations that Friends of Dusty Johnson and Barclay W. Kreth in his official capacity as treasurer violated provisions of the Act. The Commission then closed its file in this matter. A copy of the Factual & Legal Analysis is enclosed, which more fully explains the basis for the Commission's decision.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016). If you have any questions, please contact Carlos Valdivia, the attorney assigned to this matter at (202) 694-1544.

Sincerely,

Lisa J. Stevenson  
Acting General Counsel

A handwritten signature in black ink, appearing to read "J. Jordan", written over the typed name of the Assistant General Counsel.

BY: Jeff S. Jordan  
Assistant General Counsel

Enclosure:  
Factual & Legal Analysis

**FEDERAL ELECTION COMMISSION  
FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS: Friends of Dusty Johnson                      MUR 7317  
Barclay W. Kreth

**I. INTRODUCTION**

This matter arose from a complaint alleging that Friends of Dusty Johnson and Barclay W. Kreth in his official capacity as treasurer (the "Committee") violated the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations.<sup>1</sup> The Office of General Counsel has scored MUR 7317 as a low-rated matter under the Enforcement Priority System, whereby the Commission applies formal scoring criteria to determine how to allocate agency resources and which matters to pursue.

**II. FACTUAL AND LEGAL ANALYSIS**

**A. Factual Background**

Complainant Lora Hubbel alleges that the Committee failed to timely report a disbursement or in-kind contribution for a website advertisement. The Committee allegedly advertised Johnson's campaign on a political blog, South Dakota War College, during the third quarter of 2017.<sup>2</sup> The ad was purportedly worth over \$200, but the Committee failed to report a disbursement, estimated debt, or in-kind contribution associated with the blog or its owner, Pat Powers.<sup>3</sup>

<sup>1</sup> Friends of Dusty Johnson was established November 16, 2016, as Dusty Johnson's principal federal campaign committee. Johnson is a candidate for South Dakota's At-Large Congressional District.

<sup>2</sup> Compl. at 1 (Jan. 30, 2018). The attachment to the Complaint shows an October 5, 2017, blog post that discusses Johnson's October 24, 2017, fundraiser. Next to the body of the blog post an ad reads: "Dusty Johnson for Congress" and "Paid for by Friends of Dusty Johnson." Attach. at 1.

<sup>3</sup> Compl. at 2.

1 In response, the Committee concedes that Powers's blog ran ads for Johnson's campaign  
2 in the third quarter of 2017.<sup>4</sup> Johnson requested an invoice from Powers during the third quarter,  
3 and Powers sent a \$1,800 invoice to the Committee after the quarter ended. Powers also  
4 indicated that the advertisement was intended to be an in-kind contribution.<sup>5</sup> The Committee  
5 explains that it was not aware that Powers intended to run the ad as an in-kind contribution, and  
6 the Committee reported the ad as a \$1,800 in-kind contribution in its 2017 Year-End Report.<sup>6</sup>

7 **B. Legal Analysis**

8 Under the Act and Commission regulations, the political committee of a candidate for  
9 federal office must report debts for expenditures in excess of \$500 as of the date on which the  
10 debt is incurred.<sup>7</sup> If the political committee does not know the exact amount of the debt, then it  
11 must first report an estimated debt and later provide the correct amount that the committee owed  
12 for the services rendered.<sup>8</sup> Moreover, a candidate's political committee must identify individuals  
13 whose contributions to the committee aggregate in excess of \$200 in a calendar year.<sup>9</sup>

<sup>4</sup> Resp. at 1 (Feb. 16, 2018).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*; see also Amended 2017 Year-End Report at 45 (Mar. 29, 2018),  
<http://docquery.fec.gov/pdf/921/201803299097932921/201803299097932921.pdf> (the report includes a receipt for  
in-kind advertising valued at \$1,800, attributed to Pat Powers, and dated December 15, 2017).

<sup>7</sup> 11 C.F.R. § 104.11(b); see also 52 U.S.C. § 30104(b)(8) (requiring the disclosure of debt).

<sup>8</sup> See 11 C.F.R. § 104.11(b) (describing how to report estimated debt for expenditures). These reports must  
include estimated debts and in-kind contributions arising from the purchase or receipt of internet advertising. See 11  
C.F.R. § 100.52(a) ("A gift . . . or deposit of money or anything of value . . . is a contribution."); 11 C.F.R. §  
100.52(d)(1) (stating that "anything of value includes all in-kind contributions" including advertising services  
provided without charge); 11 C.F.R. § 100.111(a) ("A purchase . . . or gift of money or anything of value . . . is an  
expenditure."); 11 C.F.R. § 100.111(e)(1) (stating that "anything of value includes all in-kind contributions"  
including advertising services provided without charge).

<sup>9</sup> 11 C.F.R. § 104.7(b).

1           The ad ran during the third quarter of 2017, and, since the Committee requested an  
2 invoice from Powers, it appears the Committee intended to pay for it.<sup>10</sup> Thus, the Committee  
3 failed to timely report a debt, estimated or otherwise, that arose in connection with the ad.<sup>11</sup>  
4 Further, because Powers absorbed the costs of running the ad, not the Committee, the disclaimer  
5 on the ad (“Paid for by Friends of Dusty Johnson”) was incorrect.<sup>12</sup>

6           Because the Committee ultimately reported the transaction, albeit in an untimely manner,  
7 and the amount at issue is modest, the Commission dismisses the allegations consistent with its  
8 prosecutorial discretion to determine the proper ordering of its priorities and use of agency  
9 resources. *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985).

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<sup>10</sup> Resp. at 1.

<sup>11</sup> The Committee was required to report the estimated cost of advertising in the third quarter of 2017 and then provide the correct amount when Powers provided the invoice. *See* 11 C.F.R. § 104.11(b).

<sup>12</sup> 11 C.F.R. § 110.11(b).